C.J.'s Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Special Appeal No.92 of 2004

Nand Lal Verma
S/o late Ganga Prasad Verma,
R/o Saraswati Niwas, Tallital, Nainital
Uttaranchal.

..... Appellant/petitioner

Versus

1. Director of Local Bodies, Uttaranchal,
2. State of Uttaranchal through the Secretary, Nagar Vikas Vibhag, Government of Uttaranchal, Dehradun.
3. Executive Officer, Nagar Palika Parishad, Nainital,
4. Officer Incharge, Nagar Palika Parishad, Nainital, District Nainital.

..... Respondents.

Sri K.N.Joshi, learned counsel for the appellant,
Sri D.S.Patni, learned counsel for the respondent Nos. 3 & 4,
Learned Chief Standing Counsel for the State-respondent Nos. 1 & 2.

Hon'ble Rajeev Gupta, C.J.,
Hon'ble P.C. Verma, J.

(Delivered by Hon'ble P.C. Verma, J.)

We dismissed the special appeal on 08.02.2006.

2. Now we proceed to record our judgment. The special appeal has been filed for setting aside the order dated 01.11.2004 passed by the learned Single Judge in Writ Petition No.703 of 2002 (S/B), Nand Lal verma *versus* Director Local Bodies, Uttaranchal and others, whereby the learned Single Judge has dismissed the writ petition filed by the appellant/petitioner.

3. Brief facts of the case giving rise to this special appeal are that petitioner has sought writ under Article 226 of the Constitution of India in the nature of certiorari for quashing the order dated 02.01.2002 issued by the respondent No.3-Executive Officer, Nagar Palika Parishad, Nainital regarding retirement of the petitioner and order dated 26.07.2002 passed by the District Magistrate/Administrator, Nagar Palika Parishad, Nainital, whereby representation of the petitioner has been rejected. The appellant/petitioner was initially appointed in the year 1967 on the post of Clerk Grade-B with the Nagar Palika Parishad, Nainital and later on promoted to the post of Clerk Grade-A w.e.f. 01.07.1973. According to the petitioner, he was entitled to continue in the service up to the age of 60 years, as per Rule 3 of the Rules of 1965 framed under the U.P. Municipalities Act, 1916. However, in the year 1990 options were invited from the employees of the Nagar Palika Parishad, as to willingness to retire at the age of 58 years. Many of the employees including the petitioner gave option for retirement at the age of 58 years for certain pecuniary and pensionary benefits. But later on, the petitioner realized that he is not going to be benefited by said option and sought to withdraw the option. It was also alleged that the denial on the part of the respondents to permit the petitioner to withdraw his option and making him to retire at the age of 58 years is illegal and violative of provisions of law. The petitioner also alleged that option given in a mistaken impression of law cannot be said to be a valid option.

4. The learned Single Judge after appreciating the contentions of the respondents held that the impugned orders passed by the Executive Officer, Nagar Palika Parishad, Nainital and the District Magistrate /Administrator, Nainital do not want any interference and dismissed the writ petition. Feeling aggrieved, the petitioner has come up in the special appeal.

5. We have heard the learned counsel for the parties and perused the impugned judgment. The learned counsel for the appellant mainly contended that Rule 3(1) of the Retention and Retirement of Servants of Municipal Boards Regulations, 1965 provided that the petitioner shall be treated to have retired at the age of 60 years and he shall be paid salary upto the age of 60 years. It was also not disputed between the parties that vide Government Order dated 13th February, 1990 which was issued by the department of the Local Bodies of the State Government providing the scheme to the employees of the Local Bodies including Nagar Palika Parishads to opt for the retirement at the age of 58 years whereby an offer was made for certain pecuniary benefits to the employees. The petitioner gave his option for his retirement at the age of 58 years and availed the pecuniary benefits thereunder was also not disputed. Now he wants to withdraw the said option and to continue in service beyond the age of 58 years. The learned Single Judge recorded his finding that in view of the principle of estopple, the petitioner cannot be permitted to do so after he has availed the pecuniary benefits from the Nagar Palika Parishad and the Government. It has also been recorded by the learned

Single Judge that had there been a case where immediately after option, petitioner had opted to withdraw the same he could have been allowed with the condition that he would deposit the amount received as pecuniary benefits in the public exchequer. But it appears that for 12 long years the petitioner slept over the matter and enjoyed the pecuniary benefits and it is only when he received the notice intimating him that he has to retire on 30.06.2002, he has woken up. We are in full agreement of the aforesaid findings recorded by the learned Single Judge.

6. Further, the learned counsel for the appellant could not point out any illegality or infirmity committed by the learned Single Judge in the judgment. The appellant has no right to claim parity of the judgment dated 19.04.2004 passed by the Division Bench of this Court in writ Petition No.348 (S/B) of 2002, Gusain Ram *versus* State of Uttaranchal and others because in the said case the petitioner had sought permission to withdraw the option much before the issue of notice for retirement. Here in the present case, the appellant/petitioner has sought to withdraw his option after the service of notice of retirement. The Division Bench in Gusain Ram's case (supra) has specifically directed that the judgment shall not be treated as precedent. Thus, we are also in agreement with the finding of learned Single Judge that permitting the appellant to withdraw his option will create chaos in the matter of retirement of employees of the local bodies.

7. In view of above discussion, the special appeal is hereby dismissed. The order impugned is affirmed. We

have already pronounced the operative portion of the order on 08.02.2006 and we have now given the reasons for the order pronounced.

(P.C.Verma,J.) **(Rajeev Gupta, C.J.)**
13.02.2006 **13.02.2006**

P.Singh